

REMARKSI. STATEMENT OF CANCELED CLAIMS

Claims 20, 21, 63 and 73-74 have been canceled by the Amendment filed January 13, 2009 (the claims also being indicated as canceled in the Supplemental Amendment filed February 10, 2009).

II. STATEMENT OF STATUS AND SUPPORT FOR CLAIM CHANGESUNDER 37 C.F.R. § 1.173(c)

Following is an explanation of the support in the disclosure for the amendments made to the claims, for each of the amendments filed April 23, 2008; September 3, 2008, January 13, 2009; February 10, 2009.

A. April 23, 2008 Amendment

Claims 1-79 were previously pending. New Claims 80-81 were added. No claims were canceled. No claims were amended.

Support for the new Claims 80-81 can be found at various parts of original patent and, in particular, at Col. 1 line 50 through Col. 2 line 13; at Col. 2 lines 31-44; at Col. 3, line 29 through Col. 4, line 65; Col. 5 lines 27-30 describing the features shown in FIGS. 3 and 4. For example, entrance passage

18 shown in the figures and described in the above-mentioned sections provides support for the limitations of "the passageway being tapered" and "the passageway directs the subterranean organisms toward a specific portion of the material" as in Claim 80. Similarly, entrance passage 18 shown and described therein provides support for the limitations "the passageway having a larger opening proximate to the soil relative to a narrower opening proximate to the material, whereby the passageway directs the subterranean organisms toward a specific portion of the material" as in Claim 81.

B. September 3, 2008 Amendment

Claims 1-81 were previously pending. No new claims were added. No claims were canceled. Claims 1-3, 12, 17, 19, 23, 29, 30, 38, 50, 58, 60, 62, 65, 70, 80, and 81 were amended. Support for these claim amendments is detailed in the following with reference to the original patent.

1. Claims 1, 3

Openings: Col. 2 lines 32-38; Col. 3 lines 31-36; Col. 4 lines 7-14, lines 59-65 (entrance passages 18 and second openings 40).

Flag member extending beyond and viewable from a distance:

Col. 1 lines 58-67, Col. 2 lines 9-14; Col. 3 lines 59-65; Col. 5 lines 27-30.

Consumption by organisms: Col. 2 lines 1-5; Col. 3 lines 60-65; Col. 4 lines 59-65.

2. Claim 2

Transverse opening: Col. 2 lines 32-48; Col. 3 lines 31-36 (entrance passages 18 and second openings 40).

3. Claim 4

Openings in the side wall: Col. 2 lines 32-48; Col. 3 lines 31-36 (entrance passages 18 and second openings 40).

4. Claim 12

The spring: Col. 2 lines 50-57; Col. 3 lines 1-2 and 47-65.

5. Claim 17

Transverse passage: Col. 2 lines 32-48; Col. 3 lines 31-36 (entrance passages 18 and second openings 40).

Bait member: Col. 2 lines 1-31 and 50-67; Col. 3 lines 37-41; Col. 4 lines 15-43.

Flag member viewable from a distance: Col. 3 lines 59-65.

6. Claim 19

Flag member viewable from a distance: Col. 3 lines 59-65.

7. Claim 23

The signal comprising an exterior projection: Col. 3 lines 3-6 and lines 59-65; Col. 5 lines 27-30.

8. Claim 30

Transverse opening: Col. 2 lines 32-48; Col. 3 lines 31-36 (entrance passages 18 and second openings 40).

Exterior projection: Col. 3 lines 3-6 and lines 59-65; Col. 5 lines 27-30.

9. Claim 38

Exterior projection: Col. 3 lines 3-6 and lines 59-65; Col. 5 lines 27-30.

10. Claim 50

Material extending most of the length of the body housing:

Col. 3 lines 31-65 as shown in Fig. 3.

Exterior projection: Col. 3 lines 3-6 and lines 59-65;

Col. 5 lines 27-30.

11. Claim 58

Passage tapered from wide to narrow: Col. 2 lines 31-38;

Col. 4 lines 7-14.

12. Claim 60

Flag extending externally and viewable from a distance:

Col. 3 lines 59-65.

13. Claims 62 and 70

Transverse openings: Col. 2 lines 32-48; Col. 3 lines 31-36 (entrance passages 18 and second openings 40).

Exterior projection: Col. 3 lines 3-6 and lines 59-65;

Col. 5 lines 27-30.

14. Claims 80 and 81

Body housing the material: the body 12 at Col. 3 beginning at line 31.

Transverse passageway: Col. 2 lines 32-48; Col. 3 lines 31-36 (entrance passages 18 and second openings 40).

C. January 13, 2009 Amendment

Claims 1-81 were previously pending. No new claims were added. Claims 20-21, 63 and 73-74 were canceled by the amendment. Claims 1-6, 9-10, 17, 19, 22, 23, 30, 36, 38, 46, 48-50, 60, 62, 64, 68, 70, 78, 80, and 81 were amended by the amendment. Support for these claim amendments is detailed in the following with reference to the original patent.

1. Claims 1, 3

Openings extending through the body transverse to a longitudinal axis of the body: Col. 2 lines 32-38; Col. 3 lines 31-36; Col. 4 lines 7-14, lines 59-65 (entrance passages 18 and second openings 40).

Flag member movable from first to second position: Col. 1 lines 58-67, Col. 2 lines 9-14; Col. 3 lines 59-65; Col. 5 lines 27-30.

2. Claim 9

Passages through the side wall: Col. 2 lines 32-48; Col. 3 lines 31-36 (entrance passages 18 and second openings 40).

Passages tapering from a first larger diameter to a smaller diameter: Col. 2 lines 31-38; Col. 4 lines 7-14.

3. Claim 17

Passage extends through the housing body transverse to a longitudinal axis of the body: Col. 2 lines 32-38; Col. 3 lines 31-36; Col. 4 lines 7-14, lines 59-65 (entrance passages 18 and second openings 40).

Flag member moved from first to second position: Col. 1 lines 58-67, Col. 2 lines 9-14; Col. 3 lines 59-65; Col. 5 lines 27-30.

4. Claim 19

Flag member being movable from a first position to second position: Col. 1 lines 58-67, Col. 2 lines 9-14; Col. 3 lines 59-65; Col. 5 lines 27-30.

5. Claim 23

Placing a tubular-shaped body, with a longitudinal axis in a vertical orientation: Col. 2 line 58 to Col. 3 line 10; Col. 5 lines 14-35 and 60-67; Figs. 1 and 3.

The passageway being transverse: Col. 2 lines 32-38; Col. 3 lines 31-36; Col. 4 lines 7-14, lines 59-65 (entrance passages 18 and second openings 40).

6. Claim 30

Material being entirely disposed within the body: Col. 2 lines 60-67, Col. 3 lines 30-45 and Figs. 1 and 3.

Transverse opening: Col. 2 lines 32-48; Col. 3 lines 31-36 (entrance passages 18 and second openings 40).

Exterior projection: Col. 3 lines 3-6 and lines 59-65; Col. 5 lines 27-30.

7. Claim 36

Device is positionable in soil: Col. 3 lines 3-6; Col. 4 lines 15-20.

8. Claim 38

Signaling member moving from a first position within the body to a second position upward and out of the body: Col. 1 lines 58-67, Col. 2 lines 9-14; Col. 3 lines 59-65; Col. 5 lines 27-30.

9. Claim 46

Tapered from a wide end distal to the material consumable by the organism: Col. 2 lines 31-44; Col. 4 lines 7-22.

10. Claim 48

Wherein the signaling member comprises a flag: Col. 1 lines 50-67, Col. 2 lines 9-14; Col. 3 lines 59-65; Col. 5 lines 27-30.

11. Claim 50

Flag member moving from a first position enclosed within the body to a second position upward and out of the body: Col. 1 lines 58-67, Col. 2 lines 9-14; Col. 3 lines 59-65; Col. 5 lines 27-30.

12. Claim 60

Flag member: Col. 1 lines 58-67, Col. 2 lines 9-14; Col. 3 lines 59-65; Col. 5 lines 27-30.

13. Claims 62 and 70

Signaling member moving from a first position enclosed within the body to a second position upward and out of the body: Col. 1 lines 58-67, Col. 2 lines 9-14; Col. 3 lines 59-65; Col. 5 lines 27-30.

14. Claim 79

Top end of the body: Col. 2 lines 39-40; Col. 3 lines 47-50; Col. 4 lines 39-43; Col. 5 lines 14-23.

15. Claim 80

Tubular-shaped body housing the material: Col. 2 line 58 to Col. 3 line 10; Col. 5 lines 14-35 and 60-67; Figs. 1 and 3 (the body 12).

Passageway transverse to a longitudinal axis of the body: Col. 2 lines 32-48; Col. 3 lines 31-36 (entrance passages 18 and second openings 40).

Signaling member movable from a first position enclosed within the body to a second position out of the body: Col. 1 lines 58-67, Col. 2 lines 9-14; Col. 3 lines 59-65; Col. 5 lines 27-30.

16. Claim 81

Tubular-shaped body housing the material: Col. 2 line 58 to Col. 3 line 10; Col. 5 lines 14-35 and 60-67; Figs. 1 and 3 (the body 12).

Passageway transverse to a longitudinal axis of the body: Col. 2 lines 32-48; Col. 3 lines 31-36 (entrance passages 18 and second openings 40).

D. February 10, 2009 Amendment

Claims 1-19, 22-62, 64-72 and 75-81 were previously pending. No new claims were added. Claims 20-21, 63 and 73-74 were previously canceled in the January 13, 2009 Amendment. Claims 19, 26, 36 and 50 were amended by the amendment.

1. Claim 19

Each of the entrance passages: The amendment, adding the phrase "each of" merely clarifies that the limitation applies to

each of the entrance passages. See also, Col. 2 lines 32-48;
Col. 3 lines 31-36.

2. Claims 26 and 36

Signaling member comprises a flag: Col. 1 lines 50-67, Col.
2 lines 9-14; Col. 3 lines 59-65; Col. 5 lines 27-30.

3. Claim 50:

Front face of the radial passage: Col. 2 lines 32-48; Col.
3 lines 31-36.

III. SUPPLEMENTAL REISSUE DECLARATION

The original reissue declaration has been indicated as defective. The claims have thus been rejected on the basis of a defective reissue oath.

Filed herewith is a second supplemental reissue declaration setting forth: (1) applicant's belief that the original patent is wholly or partly inoperative or invalid, by reason of the patentee claiming less than he has a right to claim in the patent and (2) statements relative to each independent claims 23, 30, 38, 50, 62 and 70 as filed April 15, 2004 purported to

be part of the error, pointing out the differences between these new claims from the original claims.

It is submitted that this reissue declaration satisfies the requirements of 37 CFR 1.175 and MPEP § 1414.

IV. CONCLUSION

Therefore it is respectfully submitted that Claims 1-19, 22-62, 64-72 and 75-81 are allowable and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

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